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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Denied

No. 940

CARIBBEAN EMBROIDERY COOPERATIVE, INC., SANTIAGO R. PALMER, AND MAGDALENA J. PALMER,

Petitioners,

vs.

PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

JAMES R. BEVERLEY,
RAFAEL SOLTERO PERALTA,
Counsel for Petitioners.

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PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR.

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To the Honorable the Justices of the Supreme Court:

Your petitioners, Caribbean Embroidery Cooperative, Inc., Santiago R. Palmer and Magdalena J. Palmer, pray a writ of certiorari to review the judgment of the Circuit Court of Appeals, First Circuit, entered in this cause on November 18, 1941, reversing the judgment of the United States District Court for the District of Puerto Rico entered September 19, 1940.

Questions Presented.

This petition involves four questions:

(1) Whether the Fair Labor Standards Act of 1938 (52 Stat. 1060 U. S. C. Title 29, par. 201 et seq.), fixing minimum wages and maximum hours of work to employees who work in the production of goods for interstate commerce, is applicable to a cooperative of production wherein the workers are the sole owners and have complete control of the operation of the business, and share the net income according to the class of work done and to the hours worked.

(2) Whether such cooperative a "labor organization" within the meaning of Section 3(d) of the Fair Labor Standards Act, which exempts "labor organizations" from the provisions of the Act.

(3) Whether the petitioner, Caribbean Embroidery Cooperative, Inc., of San Germán, Puerto Rico, a cooperative organized under the Puerto Rican Cooperative Law (laws of Puerto Rico, Act No. 3 approved May 6, 1920, page 30), is dominated by the petitioners Santiago R. Palmer and Magdalena J. Palmer, at present Manager and Assistant Manager respectively of the Cooperative, to such an extent as to vitiate the organization of the Cooperative.

(4) In either event, whether an employer-employee relationship exists between the Palmers or the Cooperative or either of them on the one hand and the labor-members of the Cooperative on the other hand.

Summary Statement.

Prior to the passage of the Federal Fair Labor Standards Act of 1938 (52 Stat. 1060, 29 U. S. C. A. 201 ff.), the petitioners Santiago R. Palmer and his wife, Magdalena J. Palmer, owned and operated at San Germán, Puerto Rico, a business which produced handmade needlework articles,

especially handkerchiefs, for the United States market. After the passage of the above mentioned Act on June 25, 1938 by the Congress of the United States, it became evident to the Palmers that they could not continue in business after the effective date of the Act since the wages which would have to be paid under the federal Act far exceeded the gross income of the business. While considering the effect of the closing down of the business, not only on himself but on the large number of workers involved, Mr. Palmer, in conversation with an attorney, Juan Enrique Soltero, evolved the idea that the workers themselves might take over the business as a labor cooperative, sharing in the entire net earnings of the industry in accordance with the hours worked by each labor member. He discussed this with some of the leaders among the workers and a meeting was called of the workers to determine whether or not to attempt to form such a cooperative (R. 913, 914, 931, Exhibit 1 plaintiff, R. 36). The workers and their advisors understood that in a labor cooperative where the work of the members was pooled and the resulting income was divided among themselves on a basis of work done, the organization would not fall within the terms of the Federal Fair Labor Standards Act (R. 36-41, 46-47).

After a meeting of the workers was held, the workers decided to form such a labor cooperative as had been discussed and did so. The Articles of Incorporation under the special Puerto Rican law for creating cooperatives were adopted (Exhibit 1 plaintiff, R. 36) and appropriate by-laws were adopted (Exhibit 2 plaintiff, R. 63-131).

Mr. Palmer encouraged the formation of the Cooperative and subsequently entered into contracts with the cooperative whereby he became Manager, subject to the control, of course, of the Board of Directors of the Cooperative, and he also leased his machinery and buildings to the Cooperative (R. 279, 293, 298). The Cooperative commenced

to function under its own officers and Board of Directors until the present suit was brought against it by the Administrator of the Wage and Hour Division of the United States Department of Labor.

The bases of the Administrator's suit were, first, that this was not a genuine cooperative but in fact an instrument of the Palmers, and, second, that even if it were a genuine labor cooperative it would nevertheless fall within the provisions of the Federal Fair Labor Standards Act.

After a long trial, the trial Court found that the Cooperative was voluntarily formed, that it was owned and controlled by the member workers and not by Palmer and the Court held as a matter of law that there was no employer-employee relationship between the Cooperative and the member workers thereof (R. 30). The trial Court refused to enjoin the defendants from shipping and selling goods made exclusively by the worker members of the Cooperative, but did enjoin them, and we think correctly, from selling or shipping goods in interstate commerce upon which non-members of the Cooperative (home workers) had worked when such home workers had received less than the statutory minimum wage (R. 33).

On appeal to the Circuit Court of Appeals for the First Circuit this Court reversed the holding of the United States District Court for the District of Puerto Rico on November 18, 1941 and held that on the facts presented the Cooperative was dominated and controlled by Mr. and Mrs. Palmer and that the Cooperative is not a "labor organization" within the meaning of Section 3(d) of the said Fair Labor Standards Act of 1938 (R. 958-982).

Reasons Relied Upon for the Allowance of the Writ.

The question of whether a labor cooperative is exempt from the provisions of the Federal Fair Labor Standards Act of 1938 is an important one, which we believe should be passed upon by this Court, from two standpoints: first,

whether it is a "labor organization" expressly exempted by Section 3(d) of the Act, and, second, whether by its very nature, a labor cooperative can ordinarily have no employer-employee relationship as between the cooperative and its worker members. The questions are important not only from the standpoint of the intent of the Act, but also from the standpoint of workers who wish to combine their labor in small businesses and share the income on an equitable basis even though their income may not reach the standards prescribed by the Act.

This particular case involves the question of the means of subsistence of a large number of poor people in Puerto Rico who have attempted to combine in a genuine labor cooperative and who live in an overpopulated country where it is generally acknowledged that unemployment is excessive.

We submit further that the writ be granted on the basis of the record in the case in that the decision of the Circuit Court of Appeals for the First Circuit is contrary to the facts. The trial Court who heard all of the evidence and examined all of the exhibits and who had the opportunity to weigh the intelligence and ability of the various witnesses as well as their veracity, held on the facts that the Cooperative was voluntarily formed and was controlled and operated by the worker members. We submit that it was an error for the Appeal Court to reverse these findings of fact.

The questions raised in this case are of profound social and economic significance to Puerto Rican workers and to the community as a whole. The cooperative system is the only possible form of economic, legal and social organization to meet the situation created in this Island by the Fair Labor Standards Act of Congress in some industries. The needlework industry has been largely closed down in Puerto Rico.

Congress tried, in the summer of 1940, to correct the Puerto Rican situation by an amendment in the law, through which special minimum wages for this Island might be

set below the original rates. The reductions introduced in the minimum wages in the needlework industry Committee, although really substantial, nevertheless have not saved the industry under the employer system, due to the low prices obtainable for their products in a competitive market.

Thus the cooperative organization owned and controlled by the workers themselves, doing away with the salary or wage system, and giving the total net earnings to its members, was the only possible remedy for the maintenance of this handmade needlework industry, which was formerly the second largest industry in the Island.

Opinion of the Circuit Court of Appeals.

The opinion of the Circuit Court of Appeals for the First Circuit is printed in the record beginning at page 963. The opinion goes entirely upon the facts of the matter and does not decide whether or not the employer-employee relationship exists as between a labor cooperative and its worker members. The Court below holds that the Caribbean Embroidery Cooperative, Inc., is controlled by Mr. Palmer and his wife, who are joint petitioners here with the Cooperative. This is a question of fact. The Circuit Court of Appeals erroneously states in its opinion that the element of credibility is not seriously involved. We believe that the element of credibility is involved throughout the case and that the charter and by-laws of the Cooperative must be taken at their face value and that the testimony of the officers of the Cooperative and the members of the Board of Directors was for the trial Court to evaluate.

Petitioners' Position.

The petitioners' position is that the trial Court was correct in its finding of fact that this is a genuine cooperative voluntarily formed, the object of which was to pool the labor of the members and to distribute the resulting in-

come in proportion to the Cooperative work done by each member; that in such a situation no employer-employee relationship exists or can exist as between the Cooperative and its worker-members; that the Cooperative is wholly controlled and owned by its worker-members and is not subject to the provisions of the Federal Fair Labor Standards Act of 1938.

WHEREFORE your petitioners respectfully pray that a writ of certiorari be issued under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the First Circuit commanding that Court to certify and send to this Honorable Court for review and determination on a day certain to be named therein, a full and complete transcript of the record and all the proceedings in case numbered and entitled on its docket "No. 3659, October Term 1940, Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff-Appellant vs. Santiago R. Palmer et al., Defendants-Appellees", and that the said decree of the United States Circuit Court of Appeals for the First Circuit may be revised by this Honorable Court and that your petitioners may have such other and further relief as to this Honorable Court may seem just, and your petitioners will ever pray.

JAMES R. BEVERLEY,
RAFAEL SOLTERO PERALTA,
By JAMES R. BEVERLEY,
Attorneys for Petitioners.

I hereby certify that I have examined the foregoing Petition, that in my opinion it is well founded and entitled to the favorable consideration of this Court and that it is not filed for the purpose of delay.

San Juan, Puerto Rico, January 8, 1942.

JAMES R. BEVERLEY,
Attorney.